

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STACEY HERZLINGER, *on behalf of*
herself and all others similarly situated,

Plaintiff,

vs.

MARK L. NICTER,
MARK L. NICTER, P.C., THE LAW
OFFICES OF MARK L. NICTER,
TRANS-CONTINENTAL CREDIT AND
COLLECTION CORP., AND
STUART S. BLOOM

Defendants.

CASE NO. 7:09-CV-00192

OPINION & ORDER
[Resolving Docs. 166, 170]

JAMES S. GWIN,^{1/} UNITED STATES DISTRICT JUDGE:

On April 5, 2011, the Court dismissed this action in its entirety. Defendants Mark L. Nichter, Mark L. Nichter, P.C., and the law firm of Mark L Nichter subsequently moved for sanctions against the Plaintiff's counsel under 28 U.S.C. § 1927. [Doc. 166.] Plaintiff Stacy Herzlinger also filed a cross-motion seeking sanctions against the Defendants' attorneys under 28 U.S.C. § 1927. [Doc. 170.] The matter was referred to Magistrate Judge Paul E. Davison. On September 8, 2011, Magistrate Judge Davison issued a Report and Recommendation recommending that this Court deny both parties' motions. [Doc. 176.]

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of

^{1/}The Honorable James S. Gwin of the United States District Court for the Northern District of Ohio, sitting by designation.

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those portions of a Report and Recommendation to which the parties have made an objection. 28 U.S.C. § 636(b)(1)(C). Parties must file any objections to a Report and Recommendation within fourteen days of service. *Id.*; Fed. R. Civ. P. 72(b)(2). Failure to object within this time waives a party's right to appeal the district court's judgment. *Thomas v. Arn*, 474 U.S. 140, 145 (1985); *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d. Cir.1988). Absent objection, a district court may adopt the magistrate judge's report without review. *See Thomas*, 474 U.S. at 149.

In this case, neither party has objected to the Magistrate Judge's recommendation. Moreover, having conducted its own review of the record and the parties' briefs, the Court agrees with the recommendation of Magistrate Judge Davison that the competing motions for sanctions be denied. Neither party has shown that the other has violated the statute by "unreasonably and vexatiously" multiplying the proceedings in this case. [Doc. 176.]

Accordingly, the Court **ADOPTS** in whole Magistrate Judge Davison's Report and Recommendation and incorporates it fully herein by reference. The Court **DENIES** Defendants' motion for sanctions and **DENIES** Plaintiff Herzlinger's cross-motion for sanctions.

IT IS SO ORDERED.

Dated: October 3, 2011



JAMES S. GWIN
UNITED STATES DISTRICT JUDGE